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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,304	01/25/2000	Wade J. Walterscheid	12204/04701	8373

26116 7590 12/26/2002

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[REDACTED]  
EXAMINER

THOMAS, ALEXANDER S

ART UNIT	PAPER NUMBER
1772	/3

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/491,304	WALTERSCHEID, WADE J.
	<b>Examiner</b>	<b>Art Unit</b>
	Alexander S. Thomas	1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 December 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-40 and 42-58 is/are pending in the application.

4a) Of the above claim(s) 17-38 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-16,39,40 and 42-58 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Art Unit: 1772

1. Claims 8, 16, 48 and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant's arguments have been considered but are not deemed persuasive. The term "push type" fastener does not provide a boundary in terms of the type of fasteners being claimed. If the claims were to read "push fasteners" then a boundary would be provided.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 9-11, 39, 40, 42, 44, 49 and 58 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brooks. Applicant's arguments have been considered but are not deemed persuasive. Brooks discloses an inner foam layer with layers attached to both its front and back sides; see Figure 7. The instant claims do not preclude the layers on each side of the pad section being made from the same material.

4. Claims 1-3, 7, 39, 40, 42, 43, 47 and 58 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bauer. Applicant's arguments have been considered but are not deemed persuasive. Applicant argues that "Bauer still fails to disclose that the first flap is pivoted about the hinge to cause a force... position". However, this is a process limitation that does not further structurally define the claimed article. Regarding the last subparagraphs of claims 1 and 40, these subparagraphs are directed to

intended use limitations and process limitations which do not further structurally define the claimed article. Also these subparagraphs include references to a bent flap having a force urging it to return to its relaxed state. This type of force is inherent in any bent laminate and would be present in the article of the Bauer when it is bent. In any event, the presence of a force is not a structurally distinguishing feature of the claimed article.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-16, 39, 40, and 42-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mills in view of Bauer. Applicant's arguments have been considered but are not deemed persuasive for the reasons of record. Applicant argues that "Mills and Bauer still fail to disclose that the first flap is pivoted about the hinge to cause a force... position". However, this is a process limitation that does not further structurally define the claimed article. Regarding the last subparagraphs of claims 1 and 40, these subparagraphs are directed to intended use limitations and process limitations which do not further structurally define the claimed article. Also these subparagraphs include references to a bent flap having a force urging it to return to its relaxed state. This type of force is inherent in any bent laminate and would be present in the articles of the Bauer and Mills when they are bent. In any event, the presence of a force is not a structurally distinguishing feature of the claimed article.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander S. Thomas whose telephone number is 703-308-2421. The examiner can normally be reached on M-F 6:00-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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December 23, 2002

Alexander S. Thomas

ALEXANDER S. THOMAS  
PRIMARY EXAMINER